

Department of Energy

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physical state or form, contained in these facilities; or

(3) Nuclear material to be used for military applications, regardless of its physical state or form, that is in transit.

(c) *Category C—Declassified Controlled Nuclear Weapon Information.* This category includes certain declassified government information concerning the design, manufacture, or utilization of nuclear weapons or components of nuclear weapons that was once classified as Restricted Data but which has been declassified or removed from the Restricted Data Category by the Assistant Secretary for Defense Programs (or the head of predecessor agencies of the Department of Energy) under section 142 of the Atomic Energy Act.

§ 1017.9 Adverse effect test.

(a) *Determination.* In order for a Controlling Official to control government information as UCNI, the Controlling Official shall make a determination that the unauthorized dissemination of the government information under review could reasonably be expected to result in a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of—

(1) Illegal production of a nuclear weapon; or

(2) Theft, diversion, or sabotage of nuclear material, equipment, or facilities.

(b) *Other factors.* In making a determination under § 1017.9(a), a Controlling Official may consider how the dissemination of government information under review for control as UCNI could assist a potential criminal in—

(1) Selecting a target for an act of theft, diversion, or sabotage of nuclear material, equipment, or facilities (e.g., relative importance of a facility; location, form, and quantity of nuclear material);

(2) Planning and committing an act of theft, diversion, or sabotage of nuclear material, equipment, or facilities (e.g., design of operational and security systems; building plans; methods and procedures for transfer, accountability, and handling of nuclear material; secu-

rity plans, procedures, and capabilities);

(3) Measuring the success of an act of theft, diversion or sabotage of nuclear material, equipment, or facilities (e.g., actual or hypothetical consequences of the sabotage of specific vital equipment or facilities);

(4) Illegally fabricating, acquiring, or detonating a nuclear explosive device (e.g., unclassified nuclear weapon design information useful in designing a primitive nuclear device; location of unique nuclear materials needed to fabricate such a device; location of a nuclear weapon); or

(5) Dispersing hazardous nuclear material which could be used as an environmental contaminant (e.g., location, form, and quantity of nuclear material).

§ 1017.10 Nuclear material determinations.

(a) The Secretary may determine that a material other than special nuclear material, byproduct material, or source material as defined by the Atomic Energy Act is included within the scope of the term “nuclear material” if—

(1) The material is used in the production, testing, utilization; or assembly of atomic weapons or components of atomic weapons; and

(2) Unauthorized acquisition of the material could reasonably be expected to result in a significant adverse effect on the health and safety of the public or the common defense and security because the specific material—

(i) Could be used as a hazardous environmental contaminant; or

(ii) Could be of significant assistance in the illegal production of a nuclear weapon.

(b) Designation of a material as a nuclear material under paragraph (a) of this section does not make all information about the material UCNI. Specific information about the material must still meet each of the criteria in § 1017.7(b) prior to its being identified and controlled as UCNI.

§ 1017.11 Quarterly report.

The Assistant Secretary for Defense Programs shall prepare a report on a quarterly basis, to be made available

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upon request to any interested person, detailing the application during the previous quarter of each regulation or order prescribed or issued under section 148 of the Atomic Energy Act, including these regulations. Requests for this report may be sent to the Assistant Secretary for Defense Programs (refer to § 1017.16(b)(1) for the address).

This report must—

(a) Identify types of government information determined to be UCNI by any Controlling Official during the previous quarter;

(b) Include a justification specifying why the government information is UCNI; and

(c) Include a justification that these regulations have been applied so as to protect from disclosure only the minimum amount of government information necessary to protect the health and safety of the public or the common defense and security.

§ 1017.12 Review and denial of documents or material.

(a) *Reviewing Officials.* A Reviewing Official with cognizance over the information contained in a document or material is authorized to—

(1) Make a determination, based on guidelines which reflect decisions of Controlling Officials, that the document or material contains, does not contain, or no longer contains UCNI; and

(2) Apply or remove UCNI markings to or from the document or material.

(b) *Denying Officials.* A Denying Official with cognizance over the information contained in a document or material is authorized to deny a request made under a statute or Executive order for all or any portion of the document or material that contains UCNI. The Denying Official bases his or her denial on guidelines which reflect decisions of Controlling Officials. The Denying Official insures that the Reviewing Official who determined that the document or material contains UCNI correctly applied and interpreted the guidelines.

(c) *Designation.* Reviewing and Denying Officials are designated in accordance with Departmental directives issued by the Secretary.

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§ 1017.13 Retirement of documents or material.

(a) *Unmarked documents or material.* Any document or material which is not marked as containing UCNI but which contains government information within the scope of the categories in § 1017.8 shall be marked with the notice in § 1017.15(a)(2) upon retirement to a repository (e.g., an agency's centralized records storage area, a Federal Records Center, the National Archives of the United States). The Secretary may approve alternative procedures to those described in this paragraph.

(b) *Marked documents or material.* A document or material containing an UCNI notice (refer to § 1017.15) is not required to be reviewed by a Reviewing Official upon or subsequent to retirement, except that a Reviewing Official shall review any retired document or material upon request for its release into the public domain.

(c) *Existing documents or material.* Any document or material retired to a repository prior to the effective date of these regulations need not be reviewed for UCNI. However, any such document or material that is subsequently determined by a Reviewing Official to contain UCNI must be marked and protected by the repository in accordance with these regulations, upon notification from the Reviewing Official to the repository having the document or material.

§ 1017.14 Joint information, documents, or material.

(a) *Joint Information.* A Controlling Official shall coordinate with any other Government agency or DOE organization having cognizance over the information under consideration for control or decontrol prior to making the determination that the information is or is no longer UCNI.

(b) *Joint documents or material.* A Reviewing Official or a Denying Official reviewing a document or material for decontrol and public release shall coordinate this review with the DOE organization or Government agency originating the document or material and with each DOE organization or Government agency having cognizance over any information contained in the document or material.